IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 4 of 2006
WITH
CIVIL APPLICATION NO.388 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBIKA POLYCHEM - Appellant(s)

Versus

GEB & 1 - Defendant(s)

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Appearance :
MR. MRUGESH JANI for Appellant(s) : 1,
MR. M.D. PANDYA for Defendant(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 21/02/2006

ORAL JUDGMENT

Appeal is admitted. In peculiar facts and circumstances of the case, this matter is taken up to-day for final hearing.

2. The appellant challenges the order of learned 3rd

Additional Senior Civil Judge (S.D.), Valsad, passed below Application Exh.5, in Special Civil Suit No.31 of 2005 on 31/12/2005.

3. The appellant's premises were inspected on 24/8/2004 and electric meter was seized and sent for testing. It was tested on 27/8/2004, followed by supplementary bill for Rs.16 Lacs and odd amount. The appellant preferred appeal before the appellate authority by paying 20% of the amount and his power supply was reconnected on 30/9/2004. The appellate authority after considering rival side cases, reduced their supplementary bill amount to Rs.13 Lacs and odd. To challenge that order, Special Civil Application No.803 of 2005 was preferred by the appellant before this Court, which came to be withdrawn on 30/3/2005, with a view to file a suit in this regard and that is how the Special Civil Suit No.31 of 2005 was preferred before the learned 3rd Additional Senior Civil Judge (S.D.), Valsad with an application below Exh.5 for injunction.

3.1 The learned learned 3rd Additional Senior Civil Judge (S.D.), Valsad dismissed the application relying on Section 145 of the Electricity Act, 2003, holding

that Civil Court's jurisdiction is barred by that provision. Being aggrieved by the said order, present appeal is preferred. Learned Advocate, Mr.Jani, for the appellant, submitted that inspection was undertaken on 24/8/2004 and therefore, it was prior to new Act coming into force. He submitted that even, if the new Act had come into force, then also, the bar on Civil Court's jurisdiction would not be operative against the present civil suit, because of action under challenge is that of an appellate authority. Mr.Jani, has placed reliance on following decisions in support of his contentions and submitted that therefore, this appeal may be allowed.

i) **Plasto Processors & Anr. Vs. Gujarat Electricity Board and Ors., reported in 2005 (2) G.L.R. 993.**

ii) **Prabhatbhai S. Desai Vs. Ahmedabad Electricity Co. Ltd., reported in 2005 (2) G.L.R. 1266.**

3.2 Mr.Jani, submitted that pursuant to the order of Civil Court, power supply has been disconnected and therefore, appropriate relief may be granted.

4. Learned Advocate, Ms.Maya Desai, for Mr.M.D.Pandya, submitted that the reconnection may not be ordered at

this stage. So far as legal position on jurisdiction aspect is concerned, Ms.Desai, does not dispute the contention raised by learned Advocate, Mr.Jani.

5. It is clear that the provisions of the new Act would apply from 10/12/2004. In the instant case, the incident is of 24/8/2004 and, therefore provisions of the old Act would apply. The trial Court has therefore committed an error in relying on Section 145 of the new Act. The order therefore, cannot be permitted to stand. The order of the appellate authority can certainly be subjected to judicial scrutiny. The order of the Civil Court impugned in the appeal has therefore been quashed and set aside.

6. This Court refrains from making any observations on merits of the case, as merits are yet to be examined even, by trial Court.

6.1 So far as the prayer for reconnection is concerned, it is clear that pursuant to inspection on 24/8/2004 power supply was disconnected and it was restored on 30/9/2004.

6.2 The present disconnection is subsequent to the order and in the meantime, there must have been power consumption. All these factors taken collectively, this Court makes no observation on the appellant's right to pray for reconnection in the suit. Let that question be examined and decided by the trial Court.

7. Appeal stands accordingly allowed. The order passed by the learned 3rd Additional Senior Civil Judge (S.D.), Valsad, below Application Exh.5, in Special Civil Suit No.31 of 2005 on 31/12/2005, is hereby quashed and set aside with a direction to the trial Court to hear and decide the Application below Exh.5 afresh on merits without being influenced by any observations that may have been made hereinabove by this Court. The trial Court shall decide Application Exh.5, as expeditiously as possible, preferably within a period of 4 weeks from receipt of the copy of this order. There shall be no order as to costs.

8. In view of order passed in Appeal, Civil Application No.388 of 2006 is disposed of.

(A.L.DAVE, J.)

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